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JAMES KLAUSNER

2009 NOV 17 AM 11:06
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JAMES KLAUSNER,

Plaintiff,

V.

BRACHFELD & ASSOCIATES,

Defendant.

Cafe No. 6 V 09-8434 MMMM (Ex)

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

PLAINTIFF'S COMPLAINT

Plaintiff, JAMES KLAUSNER (Plaintiff), through his attorneys, KROHN & MOSS,

LTD., alleges the following against BRACHFELD & ASSOCIATES (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
U.S.C. 1692 et seq. (FDCPA).

JURISDICTION AND VENUE

2. ~~D~~jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."
3. Defendant conducts business in the state of California, and therefore, personal jurisdiction is established.

- 1 -

PLAINTIFF'S COMPLAINT

4. Venue is proper pursuant to 28 U.S.C. 1391(b)(1).
 5. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Turnersville, Gloucester County, New Jersey.
 7. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)*.
 8. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)*, and sought to collect a consumer debt from Plaintiff.
 9. Defendant is a national collection agency with a business office in Torrance, Los Angeles County, California.
 10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. Defendant constantly and continuously places collection calls to Plaintiff seeking and demanding payment for a debt Plaintiff does not owe.
 12. Defendant fails to identify itself as a debt collector in subsequent communications (transcribed voicemail messages attached as Exhibit A).
 13. Defendant places telephone calls without meaningful disclosure of the caller's identity (see Exhibit A).
 14. Defendant did not send Plaintiff a debt notice letter.

COUNT I

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

15. Defendant violated the FDCPA based on the following:

 - a. Defendant violated §1692c(a)(1) of the FDCPA by communicating with Plaintiff

1 in connection with the collection of a debt at a time or place known or which
2 should be known to be inconvenient to Plaintiff.

- 3 b. Defendant violated §1692d of the FDCPA by engaging in conduct that the
4 natural consequences of which was to harass, oppress, and abuse Plaintiff in
5 connection with the collection of an alleged debt.
- 6 c. Defendant violated §1692d(5) of the FDCPA when Defendant caused Plaintiff's
7 telephone to ring repeatedly and continuously with the intent to annoy, abuse,
8 and harass Plaintiff.
- 9 d. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without
10 meaningful disclosure of the caller's identity.
- 11 e. Defendant violated §1692e of the FDCPA by using false, deceptive, and
12 misleading representations in connection with the collection of any debt.
- 13 f. Defendant violated §1692e(2)(A) of the FDCPA by falsely representing the
14 character, amount, and legal status of Plaintiff's alleged consumer debt because
15 Plaintiff does not owe the debt.
- 16 g. Defendant violated §1692e(10) of the FDCPA by using false and deceptive
17 means in an attempt to collect a debt.
- 18 h. Defendant violated §1692e(11) of the FDCPA by failing to disclose in
19 subsequent communications that the communication was from a debt collector.
- 20 i. Defendant violated §1692f(1) of the FDCPA by attempting to collect a debt that
21 is not authorized by the agreement because Plaintiff does not owe the debt.
- 22 j. Defendant violated §1692g(a)(1-5) by failing to provide appropriate notice of the
23 debt within 5 days after the initial communication including: (1) the amount of
24 the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement

1 that unless the consumer, within 30 days after receipt of the notice, disputes the
2 validity of the debt, or any portion thereof, the debt will be assumed to be valid
3 by the debt collector; (4) a statement that if the consumer notifies the debt
4 collector in writing within the 30-day period that the debt, or any portion thereof,
5 is disputed, the debt collector will obtain verification of the debt or a copy of a
6 judgment against the consumer and a copy of such verification or judgment will
7 be mailed to the consumer by the debt collector; and (5) a statement that, upon
8 the consumer's written request within the 30-day period, the debt collector will
9 provide the consumer with the name and address of the original creditor, if
10 different from the current creditor.

12 WHEREFORE, Plaintiff, JAMES KLAUSNER respectfully requests judgment be
13 entered against Defendant, BRACHFELD & ASSOCIATES, for the following:

- 14 16. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
15 Practices Act,
- 16 17. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15*
17 *U.S.C. 1692k*,
- 18 18. Actual damages,
- 19 19. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
20 *15 U.S.C. 1692k*
- 21 20. Any other relief that this Honorable Court deems appropriate.

22 **DEMAND FOR JURY TRIAL**

23 PLEASE TAKE NOTICE that Plaintiff, JAMES KLAUSNER, demands a jury trial in
24 this cause of action.

25 ///

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RESPECTFULLY SUBMITTED,

DATED: November 11, 2009

KROHN & MOSS, LTD.

By:

Michael S. Agruss
Attorney for Plaintiff

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2 **VERIFICATION OF COMPLAINT AND CERTIFICATION**

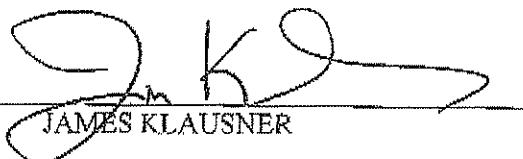
3 STATE OF NEW JERSEY

4 Plaintiff, JAMES KLAUSNER, states as follows:

- 5 1. I am the Plaintiff in this civil proceeding.
6 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
7 that all of the facts contained in it are true, to the best of my knowledge, information
8 and belief formed after reasonable inquiry.
9 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
10 law or by a good faith argument for the extension, modification or reversal of existing
11 law.
12 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
13 to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
14 needless increase in the cost of litigation to any Defendant(s), named in the
15 Complaint.
16 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
17 6. Each and every exhibit I have provided to my attorneys which has been attached to
18 this Complaint is a true and correct copy of the original.
19 7. Except for clearly indicated redactions made by my attorneys where appropriate, I
20 have not altered, changed, modified or fabricated these exhibits, except that some of
21 the attached exhibits may contain some of my own handwritten notations.

22 Pursuant to 28 U.S.C. § 1746(2), I, JAMES KLAUSNER, hereby declare (or certify,
23 verify or state) under penalty of perjury that the foregoing is true and correct.

24 DATE: 11/3/2009

25 

JAMES KLAUSNER

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3 **EXHIBIT A**
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KLAUSNER V. BRACHFELD & ASSOCIATES

Hello, this is an important call for Francis Wade. This is not a telemarketing call. Please ask Francis Wade to call us at 866-834-6218. Thank you. Good bye.

Hello, this is an important call for Francis Wade. This is not a telemarketing call. Please ask Francis Wade to call us at 866-834-6218. Thank you. Good bye.

Hello, this is an important call for Francis Wade. This is not a telemarketing call. Please ask Francis Wade to call us at 866-834-6218. Thank you. Good bye.

Hello, this is an important call for Francis Wade. This is not a telemarketing call. Please ask Francis Wade to call us at 866-834-6218. Thank you. Good bye.

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Hello, this is an important call for Francis Wade. This is not a telemarketing call. Please ask Francis Wade to call us at 866-834-6218. Thank you. Good bye.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

CV09 - 8434 MMM (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES KLAUSNER v. BRACHFELD & ASSOCIATES	PLAINTIFF(S) DEFENDANT(S).
CASE NUMBER CV09-8434 MMM (Ex)	
SUMMONS	

TO: DEFENDANT(S): BRACHFELD & ASSOCIATES

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, MICHAEL S. AGRUSS, whose address is Krohn & Moss, Ltd.; 10474 Santa Monica Blvd., Suite 401; Los Angeles, CA 90025. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Dated: NOV 17 2009

Clerk, U.S. District Court

By: NATALIE LONGORIA

Deputy Clerk

(Seal of the Court)



1198

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) JAMES KLAUSNER		DEFENDANTS BRACHFELD & ASSOCIATES				
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Krohn & Moss, Ltd.; Michael S. Agruss, Esq. 10474 Santa Monica Blvd., Suite 401; Los Angeles, CA 90025 (323) 988-2400		Attorneys (If Known)				
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)				
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4			
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5			
		Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 Foreign Nation PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6			
IV. ORIGIN (Place an X in one box only.)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)				□ MONEY DEMANDED IN COMPLAINT: \$ _____		
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 15 USC 1692 et seq.; Unlawful and Abusive Debt Collection Practices						
VII. NATURE OF SUIT (Place an X in one box only.)						
OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR	
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 520 Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 790 Other Labor Litigation	
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
<input checked="" type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS	
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights	
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent	
<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark	
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY	
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 170 Other Contract	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)	
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DWIC/DWW (405(g))	
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 210 Land Condemnation				<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure				FEDERAL TAX SUITS	
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

FOR OFFICE USE ONLY: Case Number: **CV09-8434**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
	Gloucester (NJ)

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

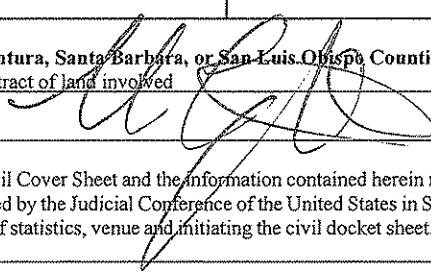
County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles (CA)	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles (CA)	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 11, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))